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T H E  
T R I A L  
O F 1490.C.67  
*William Chetwynd, Gent.*

On Three several  
INDICTMENTS,  
For the MURDER of  
*Mr. Thomas Ricketts.*

W H E R E I N  
The ARGUMENTS of the COUNCIL on  
each Side, on the several POINTS of  
LAW arising therein are fully set forth:  
With the SPECIAL VERDICT found  
by the JURY.

A T T H E  
King's Commissions of the Peace, and Oyer  
and Terminer, held for the CITY of  
LONDON, &c. on the 12th, 13th, 14th,  
and 17th of *October* 1743.

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D U B L I N:  
Printed by S. POWELL,  
For EDWARD EXSHAW, at the Bible on *Cork-*  
*Hill*, over-against the *Old-Exchange*.

MDCCLXIV.



Simnel Carter 30

# THE T R I A L O F

WILLIAM CHETWYND, Gent.

At the King's Commissions of the Peace,  
and Oyer and Terminer, held for the  
City of *London*, &c. on the 12th, 13th,  
14th, and 15th of *October* 1743.

**W**ILLIAM *Chetwynd* was indicted at Com-  
mon Law for the Murder of *Thomas Ricketts*,

He was likewise indicted on the Statute of  
Stabbing by the Name of *William Chetwynd*, of the  
Parish of *St. Ann Westminster*, in the County of *Mid-  
dlesex*, Gent. for that he not having God before his  
Eyes, &c. on the 26th Day of *September*, in the 17th  
Year of His Majesty's Reign, with Force and Arms, in  
the said Parish and the said County, in and upon *Tho-  
mas Ricketts*, in the Peace of God and our Lord the  
King then and there being, feloniously did make an  
Assault; and with a certain Knife made of Iron and  
Steel, of the Value of Sixpence, which he, the said  
*William Chetwynd*, then and there had, and held in  
his Left-Hand, him, the said *Thomas Ricketts*, in and  
upon the right Side of the Belly, of him the said *Tho-  
mas*, below the Navel of him the said *Thomas*, then  
and there feloniously, and in the Fury of his Mind,  
did strike and stab (he the said *Thomas Ricketts* then  
and there not having any Weapon drawn, nor the said

*Thomas Ricketts* then and there having first stricken the said *William Chetwynd* and that the said *William Chetwynd*, with the Knife aforesaid, did then and there give to the said *Thomas Ricketts* in and upon the right Side of the Belly of him, the said *Thomas*, below the Navel of him the said *Thomas*, one mortal Wound, of the Breadth of half an Inch, and of the Depth of three Inches, of which mortal Wound the said *Thomas*, at the Parish aforesaid, and County aforesaid, from the said 26th Day of *September* until the 29th Day of the said Month of *September*, did languish, and languishing did live; upon which said 29th Day of *September*, the aforesaid *Thomas Ricketts*, in the said Parish, and the said County, of the said mortal Wound did die; and so the Jurors aforesaid do say, that the aforesaid *William Chetwynd* the aforesaid *Thomas Ricketts* feloniously, and in the Fury of his Mind, did kill and slay, against the Peace of our Lord the King, his Crown and Dignity.

He was a third time indicted on the Coroner's Inquisition, for feloniously slaying the said *Thomas Ricketts*.

The Council for the Prisoner desired, that as the Prisoner had the Misfortune to be extremely deaf, he might have the Liberty of standing at the inner Bar, which the Court readily granted.

The Council for the Prosecution \* having opened the several Indictments, and set forth the Circumstances

\* Mr. Serjeant *Wynne*,  
Mr. *Moreton*,  
Mr. *Erskine*,  
Mr. *Purcas*,

} were of Council  
for the Crown.

Mr. *Lloyd*,  
Mr. *Legg*,  
Mr. *Hume Campbell*,  
Mr. *Hotfell*,  
Mr. *Stratton*

} were of Council for  
the Prisoner.





ees relating to the Fact, they proceeded to examine their Witnesses.

[ *Master William Hamilton, sworn.* ]

*Counc.* I think you are one of the young Gentlemen who boarded at Mr. *Clare's* Academy in *Sabot-Square*?

*Hamilton.* Yes, I am.

*Counc.* Was you boarded there last September?

*Hamilton.* Yes.

*Counc.* Was the Prisoner at the Bar at Board there then?

*Hamilton.* Yes.

*Counc.* Do you remember one Mr. *Thomas Ricketts* being there?

*Hamilton.* Yes, I was present when the Prisoner and Mr. *Ricketts* were together in the Room.

*Counc.* What Time was it?

*Hamilton.* It was on the 26th of September.

*Counc.* Who was in the Room when you went in?

*Hamilton.* There was one *Samual Melcher*, *Thomas Ricketts*, and Mr. *Chetwynd*; they were the only Persons in the Room.

*Counc.* What was the Conversation turning upon? What were they talking about, when you came into the Room.

*Hamilton.* Mr. *Chetwynd* had got some Cake, and Mr. *Thomas Ricketts* desired Mr. *Chetwynd* to give him a Piece of his Cake; *Chetwynd* denied it him; I asked him for a Piece, and he likewise denied it me.

*Counc.* What happened then?

*Hamilton.* *Hannah Humphreys* came into the Room about that Time, Mr. *Chetwynd* took the Cake, and cut a Piece off, and laid the Piece upon the Bureau, and locked the other up; with that Mr. *Ricketts* came and took the Piece of Cake off the Bureau; Mr. *Chetwynd* asked him for it; and Mr. *Ricketts* laughing, went up to the Maid, and told her, he had taken a Piece of Mr. *Chetwynd's* Cake; with that Mr. *Chetwynd* came up to him, and demanded it of him again.

*Counc.* Did Mr. *Ricketts* deliver it to him again?

*Hamilton.* No.

*Counc.* Did Mr. *Ricketts* refuse to deliver it?

*Hamilton.* Mr. *Ricketts* did not refuse to deliver it.

*Counc.* What Answer did Mr. *Ricketts* give Mr. *Chetwynd*, when he asked him for the Cake again?

*Hamilton.* He gave him no Answer, but continued laughing.

*Counc.* You mean he was laughing with you, not laughing at the Prisoner.

*Prisoner's Coun.* That's nice indeed!

*Prosecutor's Coun.* What happened next after this?

*Hamilton.* After Mr. *Chetwynd* demanded the Cake, and Mr. *Ricketts* giving him no Answer, he struck him immediately with the Knife, which he had in his Hand.

*Counc.* Was it back-handed.

*Hamilton.* It was back-handed.

*Jury.* I desire he may speak a little louder; was *Ricketts* behind him when he struck him with the Knife?

*Hamilton.* Mr. *Ricketts's* Side was to Mr. *Chetwynd's*.  
— He was standing by his Side.

*Counc.* How near were you to them.

*Hamilton.* Not very near.

*Counc.* Where did you stand?

*Hamilton.* I stood a little Way before them.

*Counc.* Where was this Blow given?

*Hamilton.* Just here about upon the Side, (pointing to the right Side of the Belly).

*Counc.* Did you see him pull the Knife out.

*Hamilton.* I did not see him pull it out.

*Counc.* How do you know it was a Knife that he struck him with?

*Hamilton.* Because it was the same Knife that he cut the Cake with.

*Counc.* What followed upon that?

*Hamilton.* Mr. *Ricketts* cried out he was afraid he was stabbed.

*Counc.*

*Counc.* Did Mr. Ricketts fall down?

*Hamilton.* No; he laid his Hand upon his Side, and said he was stabbed.

*Counc.* What sort of a Room is it?

*Hamilton.* It is a pretty large Room.

*Counc.* What Part of the Room did the Scrutore stand in?

*Hamilton.* It stood in the Corner of the Room by the Window; the Window and the Scrutore were on the same Side.

*Counc.* What kind of a Knife was this?

*Hamilton.* It was a sort of a French Knife.

*Counc.* Was it a Penknife? Or what Knife was it?

*Hamilton.* It was a pretty large Knife.

*Counc.* Was it a Clasp Knife? *Hamilton.* Yes.

*Court.* Did you see *Chetwynd* cut the Piece of Cake?

*Hamilton.* No.

*Court.* Did you see the Deceased take it away?

*Hamilton.* Yes.

*Court.* Did *Chetwynd* see him take it away?

*Hamilton.* I cannot tell that.

*The Council for the Prosecution having done with this Witness, he was examined on Behalf of the Prisoner.*

*Prisoner's Counc.* Mr. *Hamilton*, if I understand you right, the Deceased and you asked Mr. *Chetwynd* for a Piece of Cake, and *Chetwynd* refused it?

*Hamilton.* Yes.

*Counc.* So he was not willing to give either of you any?

*Hamilton.* No, he was not.

*Counc.* I think you said Mr. *Chetwynd* took the Knife out of his Pocket?

*Hamilton.* I said he cut a Piece of Cake; I did not say he took the Knife out of his Pocket?

*Counc.* I think it was a Cake that they call a Simnel; was it not?

*Hamilton.* Yes, it was.

*Counc.* I think they are very hard, with a Crust on the outside, and difficult to be cut?

*Hamilton.*

*Hamilton.* It was pretty hard.

*Counc.* Then that may possibly require more Strength than he had in one Hand, to cut it; he cut it down did not he?

*Hamilton.* I did not see him cut it.

*Counc.* You said he took his Knife and cut it?

*Hamilton.* Yes, he did cut it.

*Counc.* Then tell me whether or no, (I am sure I will do fairly, God forbid that I should do otherwise) Mr. *Cbetwynd* did not refuse to give any of the Cake to Mr. *Ricketts*?

*Hamilton.* Yes, he did refuse it.

*Counc.* Who did he cut the Cake for? Was it not for himself?

*Hamilton.* I believe it was.

*Counc.* Then he did not cut it for any body else; I think you said, he laughingly told the Maid he had got it?

*Hamilton.* Yes.

*Counc.* And upon that, Mr. *Cbetwynd* demanded it from him again, and he laughed, but did not deliver it.

*Hamilton.* He made him no Answer, but did not deliver it.

*Counc.* Did he ask him to give it him again before this unhappy Accident happened?

*Hamilton.* Yes, he did.

*Counc.* Pray tell me whether he did not besides his laughing, endeavour to keep the Cake from him?

*Hamilton.* I did not observe that.

*Counc.* Please to tell me, whether as you were School-fellows together; you were not all good Friends?

*Hamilton.* Yes, we were.

*Counc.* Which of the two was biggest.

*Hamilton.* *Ricketts* was larger than *Cbetwynd*.

*Counc.* I am obliged to the Gentleman on the other Side, for intimating that Mr. *Cbetwynd* gave Mr. *Ricketts* a Piece of Cake before, I would ask you whether Mr. *Cbetwynd* did not give Mr. *Ricketts* a Piece that Morning.

*Hamilton.*



*Hamilton.* I heard he did.

*Counc.* How long was that before this Thing happened?

*Hamilton.* I don't know how long it was. This happen'd about One o'Clock.

*Counc.* When this unfortunate Thing happened what did Mr. *Cbetwynd* say immediately upon it?

*Hamilton.* Really, I do not know.

*Counc.* I think, Sir, you were telling the Court of a *French Knife*; I own I don't know what they are; but the Question I would ask you, is, whether most of you young Gentlemen do not carry these Knives in your Pockets?

*Hamilton.* I have heard so; it was a Knife that he always had.

*Counc.* And I suppose many of you had such Knives?

*Hamilton.* I cannot tell, as to that, Sir.

*Counc.* I am obliged to you for the Candour you have used in your Evidence; I have no more Questions to ask you.

*Court.* Can you recollect, how these young Gentlemen lived together, whether there was any ill will between them, or whether they lived in a friendly Manner?

*Hamilton.* I think they lived as the other Scholars did.

*Court.* Do you apprehend there was any Malice between them?

*Hamilton.* I never knew of any Malice between them.

*Court.* How did the young Gentleman behave after he had given that Wound?

*Hamilton.* I did not see him afterwards.

[ *Master Samuel Malcher sworn.* ]

*Court.* How old are you?

*Malcher.* I am thirteen next *January*.

The



The Court asked *Malcher* what he thought would become of him, if he did not speak the Truth; to which he replied, he should be unhappy everlastingly.

*Counc.* Were you present at this unhappy Affair?

*Malcher.* Yes.

*Counc.* Then give us an Account of what you heard, and what you saw.

*Malcher.* Mr. *Ricketts* asked Mr. *Chetwynd* for a Piece of his Cake, and Mr. *Chetwynd* gave him a Piece; he asked him for another Piece, and he refused it him.

*Counc.* How long was that after he had given him the first Piece?

*Malcher.* It was about a Quarter of an Hour; and after he had refused him, he went out of the Room, with the Cake under his Arm, and then came into the Room again.

*Counc.* What Room was it?

*Malcher.* It was the Room where Mr. *Chetwynd* lay.

*Counc.* What Room did he go into, when he went out of his own Room, after his refusing him the Cake?

*Malcher.* He did not go into any Room; he only went out of the Room to the Head of the Stair-Case, and then came in again.

*Counc.* Did he open the Bureau then, or was it open before?

*Malcher.* I cannot justly recollect that.

*Counc.* You say he had the Cake with him?

*Malcher.* Yes.

*Counc.* What did he cut it upon?

*Malcher.* He cut it upon the Bureau.

*Counc.* You say he cut a Piece, what did he do with it?

*Malcher.* He laid it down upon the Bureau, and *Ricketts* came and took it — snatched it away.

*Counc.* Did *Chetwynd* see him take it away?

*Malcher.* I cannot tell whether he did or no.

*Court.* How did *Chetwynd* stand?

*Malcher.* He had his Back to *Ricketts*.

*Court.* Where did the Cake lie?

*Malcher.*

*Malcher.* The Cake was before *Cbetwynd*, and *Ricketts* put his Hand beside him, and took it away, and then he went to the Window.

*Counc.* Where did he carry it?

*Malcher.* He went to the second Window with it?

*Counc.* How far was that from the Bureau?

*Malcher.* I believe about a Yard.

*Counc.* What did he do after that?

*Malcher.* Mr. *Cbetwynd* came and stabbed him.

*Counc.* In how long Time was that after he took the Cake?

*Malcher.* I believe it was a Minute.

*Counc.* Was it so long as a Minute?

*Malcher.* I do not know whether it was quite so long as a Minute, or not, it was but a very little Time.

*Counc.* Did *Cbetwynd* ask for his Cake?

*Malcher.* I was not near enough to hear it; I was at my Box, at the other End of the Room.

*Counc.* Is it a small Room?

*Malcher.* It is not a very large Room.

*Counc.* What happened after that?

*Malcher.* Mr. *Ricketts* told the Maid he was stabbed, and then he went down Stairs.

*Counc.* Was *Hannab Humphreys* in the Room?

*Malcher.* Yes.

*Counc.* What did she say?

*Malcher.* She said he was stabbed.

*Counc.* What was said or done afterwards?

*Malcher.* Really I don't know.

*Counc.* Had *Ricketts* any Thing in his Hand?

*Malcher.* He had nothing in his Hand that I saw? nor said any Thing to provoke him, as I heard.

[*Cross Examination by the Prisoner's Council.*]

*Counc.* You was present at the Beginning of this Transaction, was you not?

*Malcher.* Yes.

*Counc.* Was you present before Mr. *Hamillon* came up?

*Malcher.* Yes, Sir.

*Counc.* When Mr. *Ricketts* had the Piece of Cake given

given him, that was before Mr. *Hamilton* came up, was it not?

*Malcher.* Mr. *Hamilton* did not see him give it him.

*Counc.* They were good Friends before this, were they not?

*Malcher.* I think so, they used to be so.

*Counc.* When *Ricketts* ask'd him for the second Piece of Cake, was not he teasing him?

*Malcher.* No, he teased him about the first; and then he went out of the Room, and *Ricketts* followed him.

*Counc.* You say, Mr. *Chetwynd* carried the Cake under his Arm out of the Room, and *Ricketts* followed him; and then *Chetwynd* came into the Room again, and *Ricketts* followed him still, did not he?

*Malcher.* Yes.

*Counc.* Then he came to his Bureau, *Ricketts* following of him still?

*Malcher.* Yes; and then I saw Mr. *Ricketts* take the Piece of Cake up, which Mr. *Chetwynd* had laid upon his Bureau.

*Counc.* Then Mr. *Chetwynd* turned about to ask for his Cake again?

*Malcher.* I did not hear him ask for it.

*Counc.* He went after him, did not he?

*Malcher.* Yes.

*Counc.* Was it not for his Cake?

*Malcher.* I cannot tell.

*Counc.* Did *Ricketts* shove him?

*Malcher.* Not that I saw.

*Counc.* When *Ricketts* took the Cake from *Chetwynd*, had *Chetwynd* his Back towards him?

*Malcher.* Yes.

*Counc.* Did *Ricketts* reach over his Shoulder, or take it under his Arm?

*Malcher.* He went under his Arm, and took the Cake.

*Counc.* Did he touch him?

*Malcher.* I cannot tell that.

*Counc.*

*Counc.* You say immediately upon that he went to the Window, how far was that from the Bureau?

*Malcher.* About a Yard or two.

*Counc.* Pray, now, when *Chetwynd* went to cut the Cake (you were there all the while) did *Ricketts* offer to assist him in it? Did he offer to lend him a Knife?

*Malcher.* Yes, he did, and had it open.

*Counc.* What did *Chetwynd* say then?

*Malcher.* *Chetwynd* said he had a Knife of his own.

*Counc.* Pray, had *Ricketts* a Knife in his Hand?

*Malcher.* Yes, he had a Knife, and offered to lend it Mr. *Chetwynd*.

*Prof. Counc.* I should be glad to know whether he did not put that Knife into his Pocket again?

*Malcher.* I do not know that he did.

*Counc.* Here is a Question misunderstood I believe, did the Knife that you speak of belong to Mr. *Chetwynd*, or to Mr. *Ricketts*?

*Malcher.* The Knife belonged to Mr. *Ricketts*.

*Pris. Counc.* That's a fair Answer to the Question.

*Court.* *Ricketts's* Knife was opened before *Chetwynd's*; were both the Knives open at the Time this unhappy Accident happened?

*Malcher.* Mr. *Chetwynd's* Knife was not opened when Mr. *Ricketts* offered him his Knife; but he refused it, and said he had one of his own.

*Court.* Was *Ricketts* Knife open then?

*Malcher.* Yes.

*Court.* Were they both open when the Accident happened?

*Malcher.* No, *Ricketts's* was clasped, and put into his Pocket, on Mr. *Chetwynd's* refusing it, and before the Cake was cut and put upon the Bureau.

*Court.* Then you saw him clasp his Knife when *Chetwynd* refused it, and put it into his Pocket?

*Malcher.* Yes.

*Court.* And this was before this Wound was given?

*Malcher.* Yes.

B

Prof.

Coun



*Prof. Coun.* Was it before the Cake was cut and laid upon the Bureau?

*Malcher.* Yes, it was.

[*Hannah Humphreys favorn.*]

*Counc.* Pray give us an Account what you know of this unhappy Affair.

*Humphreys.* The young Gentlemen were in the Dining-Room, and I was in the next Room; I heard a Noise, upon which I went into the Dining Room and asked them what they did there, and what was the Matter they were not in their own Rooms; Mr. *Ricketts* made Answer, that he wanted a Piece of Cake of Mr. *Chetwynd*; I said to Mr. *Ricketts*, have not you had a Piece; he said No, and smiled. I looked at Mr. *Ricketts*, and said, I believed he had some, for he had some Crumbs of Cake upon his Lips; Mr. *Ricketts* smiled again, and said, he wanted another Piece, or a bigger Piece.

*Counc.* Where was Mr. *Chetwynd* then?

*Humphreys.* Mr. *Chetwynd* at that Time was at his own Bureau, cutting his Cake.

*Counc.* How far was Mr. *Ricketts* off the Bureau?

*Humphreys.* He was as near as I can guess about two Yards from the Bureau; Mr. *Ricketts* went up to the Bureau to Mr. *Chetwynd*, and Mr. *Chetwynd* lifts up his Arms, and says, *Don't Mr. Ricketts*, and Mr. *Ricketts* then took the Cake.

*Court.* Mention in what manner he took it.

*Humphreys.* I think, to the best of my Knowledge, it was over Mr. *Chetwynd's* Shoulder.

*Counc.* Where did you stand at that Time?

*Humphreys.* I stood at the Corner of the middle Window, and Mr. *Ricketts* almost faced me, not quite, but was a little Sideways of me.

*Court.* Had Mr. *Ricketts* the Cake in his Hand?

*Humphreys.* He had the Cake in his Hand.

*Court.* How far were you off the Bureau then?

*Humphreys.* I was then from the Bureau about three Yards, and Mr. *Ricketts* came up to me, and said, *Hannah, I have got some Cake.* (I had a Stocking in my Hand which I was darning.) Upon Mr. *Ricketts* saying



saying he had got some Cake, Mr. *Chetwynd* came from his Bureau, to my Right-hand, and in a very short Time Mr. *Ricketts* said, *Hannab*, Mr. *Chetwynd* has stabbed me. I looked at him.

*Prof. Counc.* Did you see Mr. *Chetwynd* come from the Bureau?

*Humphreys.* Yes.

*Counc.* Where did Mr. *Ricketts* stand?

*Humphreys.* Mr. *Ricketts* stood just by me.

*Counc.* Now tell us whether you saw this Sab given?

*Humphreys.* I did not see it given.

*Counc.* Did you observe that Mr. *Ricketts* had any Thing in his Hand?

*Humphreys.* He had nothing in his Hand but a Bit of Cake.

*Counc.* Did you observe that Mr. *Ricketts* had struck Mr. *Chetwynd*?

*Humphreys.* No, he had not struck him, and was not seemingly in any Anger.

*Counc.* You say that at this Time Mr. *Chetwynd* came up and stabbed Mr. *Ricketts*.

*Pris. Counc.* No, that is not right.

*Court.* She said Mr. *Ricketts* told her so.

*Pris. Counc.* I don't doubt your Candour, but you are mistaken in the Evidence; repeat it again.

*Humphreys.* I saw Mr. *Ricketts* come from the Scrutore, and he said, Mr. *Chetwynd* has stabbed me. Says I, Mr. *Ricketts* you joke; Mr. *Ricketts* had put his Hand to his Side: I bid him take his Hand away, and then I saw a little Blood; Mr. *Chetwynd*, said I, you have done very well; Mr. *Chetwynd* said, *Hannab*, if I have hurt him, I am sorry for it.

*Prof. Counc.* Did you observe who were in the Room?

*Humphreys.* I saw Mr. *Hamilton*, Mr. *Ricketts*, and Mr. *Chetwynd*.

*Court.* Did you hear *Chetwynd* ask *Ricketts* for his Piece of Cake?

*Humphreys.* I did not hear him.

*Counc.* What became of Mr. *Chetwynd* after that ? where did he go ?

*Humphreys.* He went out of the Room.

*Counc.* How long did he continue in the House ?

*Humphreys.* He continued in the House till *Tuesday Morning*.

*Counc.* That was the next Morning ; did he give any Notice of his going away ?

*Humphreys.* I cannot tell that.

[*Council for the Prisoner on the Cross Examination.*]

*Counc.* Tell us where this Room was, where you heard the Noise before you went to them ?

*Humphreys.* It was on the same Floor.

*Counc.* Did you hear any rustling of Feet, or only their Tongues ?

*Humphreys.* It was only their Tongues ; it is my customary Way when I hear any Noise among the young Gentlemen to go to them, in order to persuade them to be quiet.

*Counc.* Where was Mr. *Chetwynd* when you came into the Room ?

*Humphreys.* Mr. *Chetwynd* was at his Bureau, and Mr. *Ricketts* was standing in the Room, and he said he wanted a Piece of Cake of Mr. *Chetwynd*.

*Counc.* Was this Mr. *Ricketts*'s Room ?

*Humphreys.* No, Mr. *Ricketts* had a Room up another Pair of Stairs.

*Counc.* Then he was got into Mr. *Chetwynd*'s Room, which was the Occasion of your asking him what he did there ?

*Humphreys.* Yes. 'Twas the Room where Mr. *Chetwynd* lay ; he had not a Room to himself.

*Counc.* Was there any Conversation about the Cake, or any asking for Cake before you went into the Room ?

*Humphreys.* I don't know, he only said he wanted another Piece of Mr. *Chitwynd*'s Cake.

*Counc.* Was Mr. *Chetwynd*'s Back towards you ?

*Humphreys.* Yes.

*Counc.* Then consequently it must be so to Mr. *Ricketts*.

*Humphreys.*

*Humphreys.* Yes, ——— Mr. *Chetwynd* put out his Arms a little to keep *Ricketts* from the Cake. It was but a very little way thus, extending his Arms a little from his Body, and raising them up, and Mr. *Chetwynd* said, *Don't Mr. Ricketts.*

*Counc.* Did you observe Mr. *Ricketts* then offer to take the Cake, or to touch Mr. *Chetwynd*?

*Humphreys.* I only observed him to take the Cake.

*Counc.* But did you see him touch him?

*Humphreys.* I did not see him touch him.

*Counc.* That is very odd, because putting out his Arms, and saying *don't*, shews as if he had done something?

*Humphreys.* He might touch his Cloaths, when he took away the Cake.

*Counc.* Was not he taller than Mr. *Chetwynd*?

*Humphreys.* He was a great deal taller than Mr. *Chetwynd*; he might for his Height reach over Mr. *Chetwynd*, and take the Cake.

*Counc.* Could he take it over his Shoulder, or over his Head without touching him?

*Cumpbreys.* Over his Shoulder he might do it without touching him.

*Counc.* Did he take the Cake over his Shoulder or over his Head?

*Humphreys.* I think it was over his Shoulder.

*Counc.* Did not Mr. *Ricketts* laugh when he had got the Cake?

*Humphreys.* Mr. *Ricketts* came away laughing, and said he had got a Bit more Cake.

*Counc.* Was there any Motion or Action between them before this Thing happened?

*Humphreys.* There was not any Motion or Action at all that I saw before this happened.

*Counc.* Did you stand facing the Bureau?

*Humphreys.* The Bureau was behind my Back, and Mr. *Ricketts* stood facing me, as I stood Side-ways to the Window, with my Work in my Hand, and Mr. *Chetwynd* was by my Right-Hand, we all three in a manner touched one another.

Counc. How could this be done without your seeing it?

Humphreys. I did not see it done.

Counc. And then the first Thing you heard was, that he was stabbed?

Humphreys. That was what Mr. *Ricketts* said.

Counc. And you at that Time did not believe it?

Humphreys. No, I did not believe it; for when Mr. *Ricketts* said he was stabbed, I lifted my Eyes off my Work, and said Mr. *Ricketts*, you joke.

Counc. Was there any Blow given?

Humphreys. I believe there was no Blow; I did not see any; I did not at first believe that there was a Wound.

Counc. As you did not believe it, it is plain that Mr. *Chetwynd* did not believe it: for he said, if I have hurt Mr. *Ricketts*, I am sorry for it. Did he look to have Anger in his Countenance?

Humphreys. No; he looked with Concern; and said, *Hannah, if I have hurt Mr. Ricketts, I am sorry for it.*

[Mr. Beeston Long sworn.]

Prosecutor's Council. Pray, Mr. *Long*, inform the Court what Discourse passed between you and the Deceased, after he had received the Wound?

Mr. *Long*. I came to Town on Monday Night, the 26th of September, and found a Letter from Mr. *Clare*; wherein he acquainted me, that Mr. *Ricketts* had met with an untoward Accident, and had received a Wound from a young Gentleman in the House, but that he thought there was then no Danger; this Letter having been wrote in the Morning, I enquired if there had been any subsequent Message from Mr. *Clare*; I was told there had not; I did not go to Mr. *Ricketts* that Night, not thinking there was any Occasion for so doing; but, in the Morning, I determined to take the Advice of Mr. *St. Hill*, who being a Gentleman very eminent in his Profession, we always take his Opinion, when any Accident happens to the young Gentlemen under our Care;



Care; I wrote a Letter to him, and desired he would meet me at the Academy that Day [that was on *Tuesday*] which he did; and I found there Mr. *Shipton* and Mr. *Middleton*, who had likewise been called in; these three Gentlemen, with Mr. *Mc'cullock*, the Surgeon of the House, viewed Mr. *Ricketts's* Wound, and thought him in very great Danger; they continued attending him till *Thursday* Morning the 29th, when he died.

Counc. What Account did Mr. *Ricketts* give you of the Occasion of this Accident?

Mr. Long. Mr. *Ricketts* told me, that on the *Monday*, about Noon, he was sent to call Mr. *Chetwynd* to fence, and found him in the Dining-Room, with a Cake, of which he asked him for a Piece, which he gave him; that he then asked Mr. *Chetwynd* for another Piece, which he refused; and cut a Piece of the Cake, and laid it upon his Bureau, which stood at the End of the Room; Mr. *Ricketts*, to teaze Mr. *Chetwynd*, for having refused him, (but without any Intention of eating or keeping it) took up the Piece of Cake, carried it to the middle Window, and said to a Maid, who stood there, *Hannah*, I have got a Piece of Cake; and, he said, that Mr. *Chetwynd* followed him, and immediately stabbed him in the Belly.

Prisoner's Council. You said, you came to Town that *Monday*, did you see Mr. *Ricketts* that Day?

Long. I came to Town that *Monday* Night, and found a Letter from Mr. *Clare*; I did not see Mr. *Ricketts* that Day; for I did not apprehend there was so much Danger, as I afterwards found there was.

Counc. How many Surgeons had you?

Long. There were four Surgeons; three were called in; and there was Mr. *Mc'cullock*, the Surgeon of the House.

Counc. I should be glad to know whether Mr. *Ricketts* gave any Account to you of any Passage that happened immediately after the taking of the Cake?

Long. He said, that after he had taken the Piece of Cake, he carried it to the middle Window, where the Maid



Maid stood; and said, *Hannah*, I have got a Piece of Cake; and that Mr. *Chetwynd* came up to him, and stabbed him without speaking a Word.

Counc. Without whose speaking a Word?

Long. Without Mr. *Chetwynd's* speaking a Word.

Counc. Did you ask him in what Manner he had lived with this young Gentleman the Prisoner, whether they did not live in Friendship?

Long. He said, he never had had any Quarrel with him; and I have Reason to think it to be true, because, Mr. *Ricketts* was a Lad of a remarkably good-natured Disposition.

Counc. Did you ask him any thing farther?

Long. Mr. *Ricketts* was generally, when I saw him, in such extreme Torment, that I did not care to trouble him with too many Questions.

Counc. Did not he tell you he forgave him?

Long. He did say that he forgave him.

Prosecutor's Council. Call Mr. *St. Hill*.

Prisoner's Council. There is no Occasion for it.

Prosecutor's Council. The Jury must have Satisfaction, that the Wound was the Occasion of his Death.

[*Mr. Peter St. Hill sworn.*]

Counc. Pray, Sir, give the Court an Account in what Condition you found the Deceased?

Mr. *St. Hill*. On *Tuesday* the 27th of last Month I received a Letter from Mess. *Drake* and *Long*, desiring me to go to Mr. *Clare's* Academy in *Soho-Square*, to see a young Gentleman, that they had the Care of, who the Day before had been accidentally wounded: I met there Mr. *Shipton*, Mr. *Middleton*, and Mr. *Mc'cullock*; and by Mr. *Mc'cullock's* Account of the Wound, who first dressed him, and the Symptoms that attended it, we had too much Reason to fear, that it had penetrated into the Cavity of the Belly, and that some of the *Viscera* were wounded; for his Belly was much swelled; and cross the Upper Part of it so very painful, as to deprive him of all Rest, and his Pulse were extremely quick, and contracted. The next Day.

Day we met again——He had had a very unquiet Night; his Pulse were extreamly quick and low; and though his Belly was not so much swell'd, yet his Pain cross the upper Part of it was more severe, and attended with a continual Hickup, and frequent bilious Vomitings.

Counc. Pray, Sir, inform us, whether you think that Wound was the Occasion of his Death? What Depth was the Wound of?

Mr. St. Hill. It is not easy to know the Depth of a Wound, after it has penetrated into the Cavity of the Belly: But, upon the whole, I think we have given our Opinion, in such a Manner, that nobody will doubt, but that the Wound was the Occasion of his Death.

Counc. Then you do think that Wound to be the Occasion of his Death?

Mr. St. Hill. I do think it to be the Occasion of his Death.

Counc. In what Part was the Wound given?

Mr. St. Hill. It was on the Right-side of the Belly, two Inches obliquely below the Navel.

[A Piece of the Blade of the Knife was produced, which was about three Inches long, and sharp at the Point.]

Council to Humphreys. Did you see the Knife in Mr. *Chetwynd's* Hand?

Humphreys. Yes.

Counc. What kind of a Knife was it?

Humphreys. It was a Knife with a long Handle.

Counc. Was it a long Blade?

Humphreys. It was such a Blade as this; this is but a Piece of it.

Counc. It is a French Couteau.

Prisoner's Counc. It is no such Thing, it is only a common French Knife.

[Mr. Peter Mc'cullock, sworn.]

Counc. Mr. *Mc'cullock*, pray, give an Account how you found the Deceased?

Mr.

Mr. Mc'cullock. I was called at half an Hour after One, on the *Monday*, to go to Mr. *Clare's*; when I came there, I asked to see the Knife, and the Knife was produced.

Counc. Was it produced broke?

Mc'cullock. Yes, it was produced to me then broke, as it is now; I probed the Wound; but did not find, at that Time, that it had penetrated into the Cavity of the Belly; the Deceased's Pulse were extreemly low, but I thought that was owing to the Fright: I went the next Day; and then upon searching the Wound, I found it had penetrated into the Cavity of the Belly, and found it to be a very bad Case; upon that Mr. *Middleton* was sent for; and after that Mr. *St. Hill*, and Mr. *Shipton*.

The Council for the Prisoner called no Witnesses, admitting that the Fact had been fairly laid before the Court by the Evidence, and acknowledged the Candour of the Gentlemen concerned for the Prosecution, in representing it to the Jury without any Aggravation; but insisted, on his Behalf, that however his Hand might have been unhappy, his Heart was innocent; that this Fact therefore could not amount to Murder at Common-Law, which the Lord *Coke* defines to be *An unlawful killing another with Malice aforethought*, either expressed by the Party or implied by the Law; that, in this Case, there was not the least of that Ingredient, their own Evidence having shewed they were Friends, Friends to the last Hour, Friends to the dying Hour; when the Gentleman said, he forgave him. That it being proved there was a Friendship subsisting, it would be talking against the Sense of Mankind, to say the Law could imply any thing contrary to what is plainly proved. That Deliberation and a Cruelty of Disposition make the Difference between Manslaughter and Murder. For which Purpose *Holloway's* \* Case was cited.

If

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\* *Vide* Appendix, No. I.

If *A* be passing the Street, and *B* meeting him, takes the Wall of *A*, and thereupon *A* kills him, this is Murder; but if *B* had jostled *A*, this jostling had been a Provocation, and would have made it Manslaughter, 1 *Hale's Hist. Pl. Cr.* 455.

If I see another's Child beat, or Wife debauch'd, it would be Murder in me to kill the Party, not so in the Parent or Husband.

A sudden Challenge and fighting immediately, the Challenge is held to be a sufficient Provocation.

The Law makes a Difference between a Person's killing another, when he is doing a lawful Act, and when he is doing an unlawful Act. If the Master designeth moderate Correction to his Servant, and accordingly useth it, and the Servant by some Misfortune dieth thereof, this is not Murther, but *per infortunium*; because the Law alloweth him to use moderate Correction, and therefore the deliberate Purpose thereof is not *ex malitia præcogitata*.

But if the Master design an immoderate or unreasonable Correction, either in respect of the Measure, or Manner, or Instrument thereof, and the Servant die thereof; if it be done *hastily*, and *without Deliberation*, this would be Manslaughter; if done with Deliberation and Design it would be Murther, L. C. J. *Hale* in his *Hist. Pl. Coron.* p. 454.

Shall the young Boy at the Bar, who was doing a lawful Act, be said to be guilty of Murder; he was rescuing what was his own; the Witnesses have told you, that after he had given the poor Boy *Ricketts* a Piece of Cake, *Ricketts* went to him for more; he denied it him; he had a Right to keep his Cake, the other had no Right to take it; and he had a Right to retake it.

There are Cases in the Books which make a Difference between Murther and Manslaughter: If a Man takes \* up a Bar of Iron and throws at another, it is Murther; and the Difference in the Crime lies between a Person's taking it up, and having it in his Hand;

*Chetwynd*

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\* *Vide Appendix, No. VI.*



*Cbetwynd* had the Knife in his Hand, and upon that a Provocation ensues, for he did not take the Knife up; if he had, that might have shewn an Intention to do Mischief. It may be doubted, whether or no, when he had this Knife in his Hand for a lawful Purpose, and in an Instant struck the other, whether he considered he had the Knife in his Hand; for if, in his Passion, he intended to strike with his Hand, and struck with the Knife, not thinking it was in his Hand, it is not a striking with the Knife.

That in respect to the Statute of the first of *James I.* † it had always been looked upon as a hard Law, and construed therefore constantly very strictly by all the Judges in favour of the Prisoner, That when the Facts amount only to Manslaughter at Common-Law, it has been the Custom of the Courts ‡ to acquit upon this Statute.

That this Act was made for a particular Purpose ¶ :  
On

† *Vide* Appendix, No. II.

‡ *At a Meeting of all the Judges, on Saturday the 28th of April, 1666, at Serjeants-Inn, to consider of such Things as might in Point of Law fall out in the Trial of the Lord Morley, who was on Monday to be tried by his Peers for a Murther; they were all of Opinion, that the Statute of 1 Jac. for stabbing a Man not having first struck, nor having any Weapon drawn, was only a Declaration of the Common Law, and made to prevent the Inconveniencies of Juries, who were apt to believe that to be a Provocation to extenuate a Murther, which in Law was not.* Kelyng 55.

¶ *This Statute was enacted in the Time of King James the First, when many Animosities arose between the English and the Scotch, who using Daggers were accustomed to stab many of the English, ex improviso, which could not have been done by a flat Sword, the usual Weapon of the English; therefore this Statute was designed to secure defenceless People from Surprise, supposing that whoever struck would be prepared.* *Rex v. Keir.* Lord Raymond 139.



On the Union of the two Kingdoms, there were national Factions and Jealousies, when wicked Persons to conceal the Malice lurking in their Hearts, would suddenly stab others, and screen themselves from the Law, by having the Act looked upon as the Result of an immediate Quarrel.

That it was to be considered, whether there was not Evidence to except this Case from the Letter of the Law: At the Beginning of the Fray *Ricketts* had a Knife in his Hand; and it was one continued Act. And another Question was, whether there was not a Struggle; here was the Cake taken, and in endeavouring to get it again this Accident happens; on the first taking of the Cake, it is in Evidence, that *Chetwynd* was forced to extend his Arms to keep the other off; now there was no Occasion for him to extend his Arms, unless the other was coming to take it from him; and then a Struggle is a Blow. In *Renner's* Case, (cited in the King and *Keite*) *Cymbal* gave no Stroke, but in struggling, and yet it was adjudged but Manslaughter in *Renner*. *L. Raymond* 143.

If a Man hath done a Trespass, and is not continuing in it, and he that hath received the Injury shall thereupon beat him to a Degree of killing, this, saith the Lord Chief Justice *Holt* (*Kelyng* 132) is Murther: But this Act of the Deceased is a Trespass, and the not restoring what he had taken was a continuing in the Trespass, and is such a Provocation as will make it Manslaughter at Common Law.

That this Statute is not to be literally interpreted, for taking up a Candlestick to throw at another has been judged a Weapon drawn §.

Meer stabbing is not within the Act; when a Man is taken in Adultery with another Man's Wife, if the Husband shall stab the Adulterer, or knock out his Brains, this is bare Manslaughter. *1 Vent.* 158. *Raymond* 213. *Kelyng* 137.

A Man must intend to kill to be within the Statute;  
and

and must intend to stab, for throwing a Hammer is not within the Act. *William's* \* Case cited in *Kelyng* 131.

That some Degree of Malice is † required in this Case, as well as at Common Law: The Act indeed has taken away the Necessity of the Proof of Malice, and laid the Negative upon the Criminal, and here the Negative is proved. The Intent of the Statute was to take away the Benefit of the Clergy from cruel and bloody-minded People; 'tis impossible to conceive, that the Parliament should, at all Events, condemn to Death those who had no preconceived Malice.

But the Case most strongly insisted, and relied on in behalf of the Prisoner, was *Buckner's* ‡ Case on this Statute, wherein the Judges all agreed, because there was some Provocation and no preconceived Malice, that he was not within the Act of Parliament.

The Council for the Crown, in Reply to the Arguments and Cases insisted upon on behalf of the Prisoner, submitted to the Court, whether (since the only Points insisted upon by way of Defence for the Prisoner, were Questions of Law, in which the Jury were to be guided by their Opinion) the Facts proved and admitted, did not clearly, in the first Place, amount to Murder at Common Law; and in the second Place, whether there could be the least Doubt in Point of Law, but that this Case was within the Statute of *James I.* c. 8.

Upon the first it was admitted, that to constitute Murder there must be Malice.

But it was argued, that Malice was of two Kinds: either express and in fact, or implied by Law.

That when one Person kills another without Provocation

\* *Vide* Appendix, No. III.

† *Vide* p. 316. Col. 2. §. 3.

‡ *Vide* Appendix, No. IV.

vocation it is Murther ||, because the Law presumes and implies Malice from the Act done.

And therefore, wherever any Person kills another it is Murther, unless some sufficient Provocation appear.

But that it is not every Provocation which extenuates the killing of a Man from Murther to Manslaughter.

A slight or trivial Provocation is the same as none, and is not allowed by Law to be any Justification or Excuse for the Death of another.

And therefore no Words of Reproach or Infamy, whatever provoking Circumstances they may be attended with; no affronting Gestures or deriding Postures, however insolent or malicious, are allowed to be put in the Balance with the Life of a Man, and to extenuate the Offence from Murder to Manslaughter. *Kelyng* 130. *Croke El.* 779. §.

For the same Reason, no sudden Quarrel upon a slight Provocation shall justify such an act of Cruelty as one Man's stabbing another, though it is done immediately in the Heat of Passion. As if two Persons, playing at Tables, fall out in their Game, and the one upon the sudden kills another with a Dagger; this was held to be Murther by *Bromley* 27 *Eliz.* at *Chester Assizes*. *Crompton's Justice* 23. *Kelyng* 128.

In like Manner, no Trespas on Lands or Goods shall be allowed by Law to be any Excuse for one Man's attacking another in such a Manner as apparently

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|| *He that doth a cruel Act voluntarily, doth it of Malice prepenſed, 3. Inst. 62.*

*Some have been led into Mistake, by not well considering what the Passion of Malice is; they have construed it to be a Rancour of Mind lodged in the Person killing, for some considerable Time before the Commission of the Fact, which is a Mistake arising from the not well distinguishing between Hatred and Malice. Envy, Hatred, and Malice, are three distinct Passions of the Mind. Lord Chief Justice Holt in Mawgridge's Case, Kelyng 126.*

§ See this latter Case at large Appendix, No. V.

rently endangers his Life, and could not be intended merely as a Chastisement for his Offence; because no violent Acts beyond the Proportion of the Provocation receive Countenance from the Law.

And therefore if a Man beats another that is trespassing upon his Goods or Lands, and does not desist, he will be justified by Law; because what he does is only in Defence of his Property, and no more than a Chastisement to an Offender.

But (says the Lord Chief Justice *Holt*) if one Man be trespassing upon another, breaking his Hedges, or the like; and the Owner, or his Servant, shall upon Sight thereof, take up an Hedge-Stake, and knock him on the Head, that will be Murther; because it is a violent Act beyond the Proportion of the Provocation. *Kelyng* 132.

That applying the Rules of Law to the present Case, it was plain, that the violent act done, bore no Proportion to the Provocation. All the Provocation given was taking up a Piece of Cake, which is not such an Offence, as can justify the Prisoner's attacking the Person, who took it up, with an Instrument, that apparently endangered his Life, or rather carried certain Death along with it.

And lastly, that *Grey's* Case † (*Kelyng* 64, and 133) was much stronger than the present: Where a Master, who was provoked with the Neglect, Disobedience, and Insolence of his Apprentice, and had therefore a Right by Law to chastise him; immediately upon receiving the Provocation, took up a Bar of Iron, at which he was then working, and struck his Apprentice, who afterwards died of the Blow. This was by all the Judges held to be Murther, notwithstanding it was done upon a sudden, and notwithstanding the Provocation, and the Right which *Grey* had as a Master, to correct his Servant. For having exceeded Measure herein, what he did was malicious.

Upon

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† *Vide* Appendix, No. VI.



Upon the second Indictment it was said, that the Gentlemen who had argued on behalf of the Prisoner, had, in order to raise a Doubt upon this Point, in Effect contended that the Statute of 1 *James I.* should never be allowed to comprehend any one Case whatsoever, or extend to any one Offender.

For if Persons indicted upon that Statute, were to be acquitted wherever the Case would have been Man slaughter at Common Law, the Statute would be entirely frustrated, and have no kind of Effect whatsoever.

Since it was only made in order to exclude such Persons as stabbed others upon the sudden, not upon their Guard, *from the Benefit of Clergy*; and was intended as a sort of Correction to the Common Law, by *restraining such Offenders, thro' Fear of due Punishment, who were emboldned by presuming on the Benefit of Clergy*, allowed by the Common Law.

But if it is to exclude none from their Clergy, who at Common Law would have been entitled to it, it can never have any Effect, and may as well be repealed.

That whatever the Reasons might be which first gave Rise to this Statute, the Legislature thought it of general publick Benefit, and therefore afterwards continued it by a subsequent Law.

And, if the Statute is to have any Force or Effect at all, there can't be a Doubt but that it must extend to the present Case.

It is expressly within the Words; *Mr. Ricketts* was stabbed, having then no Weapon drawn in his Hand, and not having before struck the Person who stabbed him.

It is plainly within the Intention; which is declared in the Preamble to have been in order to punish stabbing, or killing upon the sudden, committed in Rage, or any other Passion of the Mind, &c.

And the principal Reasons upon which the Determination in *Buckner's* Case is founded, conclude strongly against the Prisoner.

For it is there argu'd, that *Buckner* was not within the

the Statute, because it appeared to have been made to prevent sudden killing, the worst of all killing, of a Person not upon his Guard.

And secondly, because in that Case the Party slain might have foreseen the Danger, and defended himself.

But the unfortunate Person killed in this Case, had no Opportunity either of foreseeing the Danger, or of avoiding it, or making any Defence; but was killed on the sudden, before he could apprehend any Danger.

And therefore it was submitted to the Court, whether upon the Facts prov'd and not denied, the Consequence of Law was not clear that the Prisoner was guilty within both Indictments.

Mr. Baron Reynolds and Mr. Recorder (being the only Gentlemen of the long Robe on the Bench, when Mr. *Chetwynd* was tried) taking Notice of the Points of Law that had arisen, the learned Arguments of the Council, and the many Cases cited upon this Occasion, were of Opinion, that it would be proper to have the Facts found specially, that they might be put in a way of receiving a more solemn Determination. A Special Verdict was accordingly on all Sides agreed on, and drawn up to the following Purport, *viz.*

The King against *William Chetwynd*, the same against the same, and the same against the same.

We find that *Thomas Ricketts*, on the 26th of September last, being a Scholar at Mr. *Clare's* Academy, in *Sobo-square*, was in a Room in the said Mr. *Clare's* House, in which the said Mr. *Chetwynd* used to lie, (and not Mr. *Ricketts*) in Company with the Prisoner *William Chetwynd*, *William Hamilton*, *Samuel Malcher*, and *Hannah Humphreys*, a Maid-Servant in the said Mr. *Clare's* Family; that the said Mr. *Chetwynd*, the Prisoner, having his own Cake in his Hand, which was a hard Cake, called a *Simnel*,

and hard to cut, the Deceased *Thomas Ricketts*, asked the said *Mr. Chetwynd* to give him a Piece; upon which the said *Mr. Chetwynd* gave him a Piece; that the said *Thomas Ricketts* afterwards asked him, the said *Chetwynd*, to give him some more of his Cake, which the said *Chetwynd* refused, and thereupon, the said *Chetwynd* went out of the said Room, with his Cake under his Arm, and the Deceased followed him, out of the said Room; upon which, the said *Chetwynd* returned again, into his said Room, and went to his own Bureau, and cut again another Piece of the Cake for himself; the said *Ricketts* offered to lend the said *Chetwynd* his Knife to cut the Cake, and at the same Time pulled his Knife, being a Clasp'd Knife, out of his Pocket, and opened it, but the said *Chetwynd*, refusing to make Use of the said *Ricketts* Knife, saying, he had a Knife of his own, the said *Ricketts* put up his Knife again, and immediately after this, the said *Chetwynd* being then at his Bureau, cut off a Piece of the said Cake with his own Knife, being a common Knife, and such as *Mr. Chetwynd*, and his School-Fellows generally used, and laid the same Piece of Cake upon the Top of his Bureau for himself; that the said *Chetwynd*, standing then with his Back to the rest of the Company, was putting the rest of his Cake into his Bureau, and, whilst he was so doing, the Deceased came up, and put his Hand over the said *Mr. Chetwynd*'s Shoulder, whereupon the said *Mr. Chetwynd* raising his Arms, said to the Deceased, don't *Mr. Ricketts*, the said *Mr. Ricketts* immediately snatched the said Piece of Cake away, against the Consent of the said *Mr. Chetwynd*, which lay upon the Top of the said Bureau, and went up to the said Maid-Servant, who was about two or three Yards off, and said, laughing, *Hannah*, I have got a Piece of *Mr. Chetwynd*'s Cake, which he shewed to her in his Hand; that thereupon, immediately the said *Mr. Chetwynd* followed the Deceased, with his Knife in his Hand, and demanded the said *Mr. Ricketts* to return him his Piece of Cake, the Deceased, *Mr. Ricketts*, returned no Answer to this, but continued laughing, and

and did not return the Piece of Cake; upon which, the said Mr. *Chetwynd* struck the said Mr. *Ricketts* backhanded, with the said Knife which he had kept in his Hand all along, and with which he had cut the said Cake, (the said *Ricketts* being then only in his Waistcoat, which was at that Time unbuttoned) and gave him a Wound upon the Right side of the Belly below the Navel, which penetrated into the Cavity of the Belly, (the Deceased not having before struck the Prisoner, and not having at that Time any Weapon in his Hand) that immediately after, the Deceased cried out, *Hannah*, *Chetwynd* has stabbed me; and then the said *Hannah*, said to the Prisoner, What have you done? Upon which the Prisoner looked on the said *Hannah*, with Concern, and said, If I have hurt Mr. *Ricketts*, I am sorry for it: We find that there never had been any Quarrel or Malice between the Deceased and the Prisoner, but that they constantly had lived in Friendship together. And we find likewise, that the Deceased was about the Age of Nineteen \*, and Mr. *Chetwynd* about the Age of Fifteen; and that of this Wound the Deceased died, on the 29th of the said *September*; and whether upon the whole, the Prisoner is guilty of all, or any of the several Indictments, the Jurors submit to the Judgment of the Court.

*Allen Evans,*  
*Samuel Bowler,*  
*Charles Carleton,*  
*Francis How,*  
*Benjamin Ingram,*  
*Jacob Lebat,*

*Jonathan Alderton,*  
*Peter Archambo,*  
*John Archambo,*  
*Benjamin Tickner,*  
*John Holmes,*  
*Thomas Hogg.*

## APPENDIX.

\* That Mr. *Ricketts* was about Nineteen Years of Age was admitted: No Evidence being offered as to the Age of the Prisoner, the Jury form'd their Judgment thereof, on seeing him.



# A P P E N D I X.

## NUMB. I.

### *Holloway's Case, 4 Charles I.*

**H**olloway was indicted for the Murther of one *Payne*. The Indictment was, that he with Malice forethought tied the said *Payne* to a Horse's Tail, and caused the Horse to drag him on the Ground three Furlongs, whereby the Shoulder of the said *Payne* was broke, whereof he instantly died. On not guilty pleaded, the Jury found a Special Verdict, that the Earl of *Denbigh* was seised in Fee of *Osteley Park* in *Middlesex*, and made the said *Holloway* Woodward of the said Park; and that the said *Payne*, with others unknown, entered the said Park, to cut Wood there; and that the said *Payne* climbed up a Tree, and with an Hatchet cut down some Boughs thereof; and that *Holloway* came riding into the Park, and seeing *Payne* on the Tree, commanded him to descend, and he descending from thence, *Holloway* struck him two Blows upon the Back with his Cudgel; and *Payne* having a Rope tied about his Middle, and one End of the Rope hanging down, *Holloway* tied the End of that Rope to his Horse's Tail, and struck *Payne* two Blows upon his Back; whereupon the Horse running away with him, drew him upon the Ground three Furlongs, and by this Means brake his Shoulder, whereof he instantly died; and *Holloway* took *Payne* and threw him into a Bush, behind the Pales of the Park. And whether upon all this Matter found the said *Holloway* be guilty of the Murther, they pray the Discretion of the Court, &c.

This Special Verdict was removed by *Certiorari* into the *King's Bench*, and depended there: And the Opinion of all the Judges and Barons was demanded,

ed, and they all (except *Hutton*, who doubted thereof) held clearly, that it was Murder. For when the Boy, who was cutting on the Tree, came down from thence upon his Command, and made no Resistance, and he then struck him two Blows, and tied him to the Horse's Tail, and then struck him again, whereupon the Horse ran away, and he by that Means was slain, the Law implies Malice, and it shall be said in Law to be prepensed Malice, he doing it to one who made no Resistance. Whereupon he was adjudged to be hanged, and was hanged accordingly. *Croke*, *Charles*, 131. *Palmer* 545. *W. Jones* 198. *Kelyng* 127.

## NUMB. II.

1 Jac. c. 8. *An Act to take away the Benefit of Clergy for some kind of Manslaughter.*

To the End that stabbing and killing Men on the sudden, done and committed by many inhumane and wicked Persons, in the Time of their Rage, Drunkenness, hidden Displeasure, or other Passion of Mind, contrary to the Commandment of Almighty God, and the common Peace and Tranquillity of this Realm, may from henceforth be restrained through Fear of due Punishment to be inflicted on such cruel and bloody Malefactors, who heretofore have been thereunto emboldened, by presuming on the Benefit of Clergy.

Be it therefore enacted, &c. that every Person which shall stab or thrust any Person that hath not then any Weapon drawn, or that hath not then first stricken the Party which shall so stab or thrust, so as the Person so stabbed or thrust, shall thereof die, within the Space of six Months then next following, although it cannot be proved that the same was done of Malice forethought, yet the Party so offending, and being thereof convicted, &c. shall suffer Death, as in case of wilful Murder.

Provided

Provided always, that this Act, or any thing therein contained, shall not extend to any Person or Persons which shall kill any Person or Persons *se defendendo*, or by Misfortune, or in any other Manner then as aforesaid; nor shall extend to any Person or Persons, which in keeping and preserving the Peace, shall chance to commit Manslaughter, so as the said Manslaughter be not committed wittingly, willingly, and of Purpose, under Pretext and Colour of keeping the Peace; nor shall extend to any Person or Persons, which in chastising or correcting his Child or Servant, shall besides his or their Intent and Purpose, chance to commit Manslaughter. This Act to continue until the End of the first Session of the next Parliament.

3 Car. c. 4. continued.

### NUMB. III.

*At the Sessions in the Old-Bailey, March 22, 1638.*

*David Williams* was indicted specially upon the Statute 1 Jac. for the Death of *Francis Marbury*; on which a Special Verdict was found, *viz.* That upon *St. David's-Day*, the Prisoner being a *Welshman*, had a Leek in his Hat; and that there was, at the same Time, in waggery, a Jack a lent in the Street put up with a Leek; and one *Nicholas Redman*, a Porter, said, *Look at your Countryman*; and the Prisoner being therewith enraged, threw an Hammer at *Redman*, to the Intent feloniously to hit him, but missing him, the Hammer did hit *Francis Marbury*, whereof he died; and so the said *David* the said *Francis* with the said Hammer did stab and thrust, the said *Francis* then not having any Weapon drawn, nor then having first stricken the said *David*, It was resolved he was not within that Statute, but guilty of Manslaughter at Common-Law. *W. Jones* 432. 1 *Hale Hist. Pl. Cor.* 469.

This Case, I fear, hath been the Occasion of some Mistake in the Decision of Questions of this Kind:

Kind: I concur with the Judgment, that it is not within the Statute of Stabbing, for it is not such a Weapon, or Act, that is within that Statute: neither could he be found guilty of Murther, but only of Manſlaughter, for the Indiſtment was for no more. But if the Indiſtment had been for Murther, I do think that the *Welſhman* ought to have been convicted thereof, for the Provocation did not amount to that Degree, as to excite him deſignedly to deſtroy the Perſon that gave it him. Lord Chief Juſtice *Holt* in *Mawgrige's* Caſe.

## NUMB. IV.

*The Protector and Buckner.*

Mich. 1655. *In the Upper Bench.*

*Buckner* was indiſted upon the Statute of 1 *Jac.* made againſt Stabbing, at the Juſtice-Hall in the *Old-Bailey* for killing of *Horwood*; and upon the Evidence given for the Protector, the Jury found a Special Verdict, which was to this Effect, viz. That *Horwood* and another Man with him came into the Lodging of *Buckner*, being in *Drury-Lane*; and when they were come into the Lodging, that other Man took down a Sword in the Scabbard which hung there, and ſtood at the Door of the Chamber with this Sword undrawn in his Hand, and kept the Door to keep *Buckner* from going out, till they might bring a Bailiff to arreſt *Buckner* for a Debt which he owed *Horwood*, whereupon upon ſome Diſcourſe between *Buckner* and *Horwood*, *Buckner* takes a Dagger out of his Pocket, and ſtabs *Horwood* and kills him, and whether this was within the Statute of Stabbing was doubted by the Jury. Upon which *Buckner* was committed to *Newgate*, and after the Body and the Cauſe was removed into this Court by a *Habeas Corpus* and *Certiorari*, and argued divers Times at the Bar, and at laſt on the Bench;

And firſt *Arthur Harris* of *Lincoln's Inn*, opened the Record, and only put the Queſtion; and then,



on the Behalf of the Prisoner it was moved, that he might have a Copy of the Record, and Council assigned him, such as he desired, which the Court granted; then it was prayed he might be bailed, but that the Court would not grant, but turned him over to the *Marshal*, and gave a Day for the Protector's Council to be heard;

At which Day *Tawisden* for the Protector made this Question, Whether *Buckner* was to have his Clergy in this Case, or were debarred by the Statute or not, and he said, this Question should not have been made by the Jury as they have done upon the Special Verdict, but the Court ought to have made it; for the Jury are only to proceed upon Matter of Fact, and not upon Matter of Law, and he argued, that he ought not to have his Clergy, for the Statute of 1 *Jac.* doth not create the Offence, but leaves it to the Common-Law, and only takes away the Clergy from the Party that commits it; and to prove this, 1. It is not within the Words of the Statute, and 2<sup>dly</sup>, It is not within the Meaning of the Statute, neither in its Preamble, nor in the Body, or in the Proviso thereof; for *Buckner* was not first struck, nor had he a Weapon drawn against him, although he was kept a Prisoner in his Chamber, which was not a considerable but a slight Provocation of him to move him to so foul a Fact. And within the Body of the Act, there are no Acts expressed, but having a Weapon drawn against him, or being first struck, and this Enumeration of the Acts excludes all other, as it is in the Statute of Fines, and in the Statute which takes away Clergy. Also the Reason of Law requires to allow the Clergy to one that is first stricken: But here is no such Reason, and the Party might have had his Remedy against *Horwood*, for coming into his Chamber, and imprisoning of him, by an Action of Trespass; and the having a Weapon drawn, was a Reason for the other to defend himself.

*Finch Henage* for the Prisoner argued, that the Prisoner was not guilty of Felony at the Common-

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Law,

Law, and is not within the Statute, by which his Clergy should be taken away. For first the Statute is to be literally interpreted, because it is made in restraint of the Common-Law, and it was made only to prevent Feuds betwixt the *English* and the *Scottish* Nation, which were then apt to break forth; and the Quarrel here was not a drunken and sudden Quarrel, but acted upon Deliberation, and here is an Assault so great used against the Prisoner, that it amounts to the striking of him, 43 *E. 3. f. 41. 42. E. 3. f. 7.* and the Imprisonment of him is more than an Assault, and here is found a forcible Entry into his Chamber, and the sending for a Bailiff, and the standing at his Chamber-door with a Sword in the Party's Hand, though not drawn, which is as much in effect as if it had been drawn, and 23 *Car.* the Clergy was allowed to two Persons that aided and assisted a third Person in stabbing of a fourth Man, and that because the Clergy shall not be taken away by Intendments.

*Glyn, Chief Justice.* The Statute hath not been so favourably construed as hath been argued, for here is no Stroke, nor Weapon drawn for his present Defence, as the Statute intends; and stabbing with a Tobacco-Pike, and with a Halberd, hath been adjudged to be stabbing within the Statute, and the Statute doth not say being first assaulted, as this Case is, but first stricken, and I conceive not that there are any Words in the Statute that will keep you out of it. *Day was given over to the next Term.*

At which Day the Special Verdict was again repeated by *Serjeant Maynard*, and by him it was argued for the Prisoner that he was not within the Statute of 1 *Jac.* of stabbing; because first here was an unlawful Imprisoning of *Buckner* in his own Chamber, and this could not be without an Assault; next this Statute is not to be literally interpreted, for if there be Acts of Terror used against one, although a Weapon be not drawn, yet he is not within the Statute, although he kill another, for the taking  
up

up of a Candlestick to strike another, hath been adjudged a Weapon drawn, and he cited *Patye* and *Horwood's Case*; and all the Persons that came into his Chamber were Trespassers, and one of them taking the Sword in his Hand, how could it be known what Mischief might have been done with it? *Cook's Case* 14 *Caroli*, one may do a lawful Act by unlawful Means, and although *Buckner* did ill, yet he is not within the Statute.

*Arthur Harris* on the other Side argued, that the Act was stabbing within the Statute, and ousted the Prisoner of his Clergy, and that he is within the Meaning and Words of the Statute. The Statute intended to prevent the killing of Men suddenly, which is the worst of all other killing; for, it is, as it were, to destroy not only the Body, but even to kill Body and Soul also, and therefore though the Statute be penal, yet it is not to be favourably interpreted, it being made for the Peace and Quiet of the Nation. The killing is the Matter aimed at in the Statute, and it matters not whether the Party be killed with a Fauchion or a Pistol, as *Williams's Case* was, that killed another, by throwing a Taylor's Goose at him; and he is not within the saving of the Statute though he was assaulted, and the other stood with the Sword in the Scabbard in his Hand, 36, 37 *Eliz. Hanger* and *Molin's Case* in the Exchequer Chamber. The Words of the Statute are, not being first struck, but an Assault is not a striking, and so he is out of the Letter of the Statute; and here is no Weapon drawn, for the Sword was in the Scabbard, which is no more than a Staff in a Man's Hand, *Stat. 5. E. 6. c. 4.* and it is like a Pistol uncocked; and if the Sword had been drawn it would not have altered the Case, because it was not in *Horwood's* Hand, who was slain, but in another's, and you cannot extend the Statute further.

*Glyn, Chief Justice.* Will you have it argued any more? *Finch.* No.

*Glyn, Chief Justice.* I have considered of the Verdict, and consulted with the Statute, and advised with all the Judges, and they are of mine Opinion. This is a good Law, and to be interpreted strictly, yet I hold the Prisoner is not within it, for the Scope of the Statute appears by the Preamble, the Body and Saving of it, which do all confirm my Opinion. My first Reason is, because I find that the Intent of the Statute is against sudden killing, but here was not a sudden killing, and the Statute takes not away the Clergy from all manner of Manslaughter: and here was a Trespass and an Imprisonment acted against the Prisoner before he killed *Hornwood*, and so the Act was not suddenly done. *2dly*, The Body of the Act seems to mean, that there ought to be Malice in the Case, and it doth not intend we should stick to the very Words of it; and here the Party slain might have foreseen the Danger, and defended himself. *3dly*, The Proviso excepts divers Particulars out of the Law, and the Word killing is only in the *Proviso*, so that there is Provision made how the Statute shall be interpreted, *viz.* That it must be sudden killing, which is not so here, for there is Provocations, and Time intervenient betwixt them and the stabbing, and the Verdict finds no pre-conceived Malice, and the Statute extends to no other killing by the *Proviso*. And if one be assaulted by Thieves which have no Sword drawn, and the Party assaulted stabs one of the Thieves, he is not within the Intent of the Statute, although he be within the Words of it; or if one be assaulted in his House, and the Assaulter hath no Weapon drawn, and one of the Assaulters be shot, yet the Party assaulted is not within the Statute. *15 Car. in Davy and Williams's Case*, it was adjudged by all the Judges, that he that killed another by throwing a Hammer at him was not within the Statute, because there was a preceding Provocation of him. And if two assault a third Person, and one of them strike the third Person, and the third Person



Person kills the other that did not strike him, I do not conceive he is within the Statute, for it is the Assault of both, and shall also be adjudged the striking of both.

*Asb Justice* held he was within the Statute, because it was not unlawful to come to arrest him, and here was no Weapon drawn, and so it was adjourned to another Day.

At which Day *Buckner* was again brought to the Bar, *Asb Justice* repeats the Special Verdict, and made the Question, whether this Fact of *Buckner* be within the Statute of 1 *Jac.* enacted against stabbing, and he argued that it was, and that *Buckner* could not have his Clergy, because the Statute shall be taken beneficially for the Common-wealth, and not for the Prisoner, who is a particular Person, and the Intent of the Statute is to take away the Clergy for some Felony; neither by the Common Law, nor by the Law of God is there Clergy given for killing a Man, and it was the *Papish* Power that introduced the Clergy to be given for Manslaughter, and also for Murther, in diminution of the Common Law, and of Regal Power, yea, and of the Law of God also; and if a Woman kill one, she shall not have her Clergy, but be hanged, which shews that by the Common Law the Clergy was not given for Manslaughter. And by the Law of God I find no Difference between Murther and Manslaughter, for it makes no Difference between hot Blood and cold Blood, as we do now distinguish; and every Word in the Statute methinks doth take away the Clergy by way of Argument, even from the Title of the Act to the very End of it; and here is a great Sin to be punished, and great Inconveniences would follow to admit of the Clergy in such Cases as this is, and here was a sudden killing as the Act expresseth, for it was done with a Dagger which was not seen, but suddenly drawn out of a Pocket, and no Weapon was drawn against him; for the Provocations alledged, they cannot amount

to the drawing of a Weapon, or such a Provocation as the Statute intends, for all the Acts done by *Horwood* amounted but to a Trespass, and cannot be such a Provocation as should cause *Buckner* to fear his Death, for no Violence was used to his Person by striking, or drawing of a Weapon, or otherways, and the sending for Bailiffs to arrest him cannot be such a Provocation as the Statute intends, which is to put the Party in fear of his Life, and the Party knew that *Horwood* came with an Intent only to arrest him, and not to kill him, nor did the Party slain to do any thing against *Buckner* to provoke him; and there is by Presumption of Law a presumed Malice in *Buckner* to kill *Horwood*, which is seen by his sudden Manner of stabbing him, and *Davy* and *Williams's* Case urged on the other Side is not like to this Case. I grant if one kill a Thief suddenly it is not within the Statute, for such killing was never intended to be prevented by it. The worst Words one Man can give another are not a sufficient Provocation within the Statute, for speaking of Words doth much differ from drawing of a Weapon: Nor is this a killing *se defendendo*, or by Misfortune, but a killing at the Common Law, and so the Clergy is taken away by the Statute, and those of *Serjeants-Inn* in *Fleet-street*, amongst whom are *Barkly Foster*, and *Rolle*, who have been Judges, are of my Opinion.

*Glyn*, Chief Justice, held it not within the Statute, he argued long much to the Effect as formerly, but having taken cold, I could not distinctly hear him. *Adjourned.*

This Case was again argued, *Trin.* 1656, to inform Justice Warburton, who was called to that Bench, after the former Arguments and Opinion of the Court delivered much to the same Manner as formerly, by *Finch* for the Prisoner, and *Baldwyn* for the Protector; and thereupon my Lord Chief Justice *Glyn* and Justice Warburton were of Opinion against Justice *Ash*, and so Judgment was given for the

the Prisoner, that the Stabbing was not within the Statute, but was only Felony at the Common-Law, and the Prisoner was admitted to his Clergy, and burnt in the Hand accordingly. *Styles's Reports*, 467.

## N U M B. V.

*Watts and Brains. B. R. 1599.*

Appeal of Murther for the Death of her Husband. The Defendant pleaded not guilty; and upon Evidence at the Bar it appeared, that two Days before her Husband's Death, he and the Defendant fighting upon a Quarrel then betwixt them, the Defendant was hurt in that Fray; and the third Day after the Plaintiff's Husband passing by the Defendant's Shop, the Defendant pursued him suddenly, and the Husband's Back being towards him, so as he perceived him not, the Defendant struck him upon the Calf of his Leg, whereof he instantly died; the Defendant, to excuse himself affirmed, that he, who was slain, when he came by his Shop, smiled upon him, and wry'd his Mouth at him, and therefore, for this mocking of him, he pursued him. And it was much enforced by the Defendant's Council, that it was a new Cause of Quarrel; and so the Stroak is not upon any precedent Malice, and therefore it is not Murther: But all the Court severally delivered their Opinions, that if one make a wry and distorted Mouth, or the like Countenance upon another, and the other immediately pursues, and kills him, it is Murther; for it shall be presumed to be Malice precedent, and that such a slight Provocation was not sufficient Ground, or Pretence, for a Quarrel; and so delivered the Law to the Jury, that it was Murther, although what the Defendant pretended had been true; whereupon, the Jury going from the Bar, notwithstanding the Evidence was pregnant against the Defendant, Eight of them agreed to find him not guilty, but the other four withstood them, and would not find it, but to be Murther; and on the next Day Morning,

two

two of the Four agreed with the Eight, to find him not guilty; and afterwards, the other two consented in this Manner; that they should bring in, and offer their Verdict not guilty; and if the Court disliked thereof, that then they all should change the Verdict, and find him guilty. And, upon this Agreement, they came to the Bar, and the Foreman pronounced the Verdict, that the Defendant was not guilty; and the Court much misliking thereof, being contrary to their Direction, examined every one of them by the Poll, whether that was his Verdict; and Ten of the first Part of the Pannel, severally affirmed their Verdict, that the Defendant was not guilty; but the two last affirmed how they agreed, and discovered the whole Manner of their Agreement; whereupon, they were sent back again, and returned, and found the Defendant guilty. And, for this Practice, *Harris*, the Foreman, was afterwards fined 100 Marks, and the other Seven, who agreed with him at the first, every of them was fined 40 *l.* and the other two, who agreed with the Eight, although they affirmed, that it was, because they could not endure, or hold out any longer; yet for that they did not discover the Practice, being examined by Poll, but affirm'd the Verdict, were fin'd each of them at 20 *l.* and all of them imprisoned; but the other two were dismissed, yet blamed, for such a Manner of consenting in Abuse of the Court. And afterwards, the Defendant was adjudged to be hanged.

## N U M B. VI.

*At the Sessions in the Old-Bailey, Octob. 10, 1666:*

*John Grey* being indicted for the Murther of *William Golding*, the Jury found a Special Verdict to this Effect, *viz.* We find, that the Day, Year, and Place in the Indictment mentioned, *John Grey*, the Prisoner, was a *Blacksmith*; and that *William Golding*, the Person killed, was his Servant; and that *Grey*, his Master, commanded him to mend certain Stamps, being part belonging to his Trade, which he neglected to do; and



and the said *Grey*, his Master, after coming in, asked him, the said *Golding*, why he had not done it; and then the said *Grey* told the said *Golding*, that if he would not serve him, he should serve in *Bridewell*; to which the said *Golding* replied, that he had as good serve in *Bridewell*, as serve the said *Grey*, his Master; whereupon the said *Grey*, without any other Provocation, struck the said *Golding* with a Bar of Iron, which the said *Grey* then had in his Hand, upon which he and *Golding* were working at the *Anvil*; and with the said Blow he broke his Scull, of which he died; and if this be Murder, &c. This was held to be Murder by all the Judges of the *King's-Bench*, with the Concurrence of the Lord Chief Justice Bridgman.

N. B. Mr. *Chetwynd* obtained his Majesty's Pardon.



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Quod pulchræ Clunes, breve quod Caput, Ardua  
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